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**4. Equity (§ 427\*)—Pleading, Proof and Decree—Conformity.**—The bill merely alleging fraud in procuring a deed and asking its cancellation, the court sustaining the deed cannot cancel for fraud a lease from the grantee to the grantor; the proof and decree being required, in equity as at law, to conform to the pleadings.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 1001-1014; Dec. Dig. § 427.\* 11 Va.-W. Va. Enc. Dig. 890.]

Appeal from Circuit Court, Grayson County.

Suit by one Cox and others against R. C. Fulton. From an adverse decree defendant appeals, and complainants assign cross-error. Reversed and rendered.

*W. S. Poage*, of Wytheville, *R. L. Kirby*, of Independence, *J. H. Rudy* and *J. D. Perkins*, of Marion, for appellant.

*J. S. Bourne* and *H. A. Cox*, both of Independence, for appellee.

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HARMAN *v.* MOSS et al.

Sept. 9, 1915.

[86 S. E. 111.]

**1. Tenancy in Common (§ 33\*)—Contracts between Cotenants—Rights and Obligations.**—A contract between owners of undivided interests in real estate which grants to one of them the right to buy or sell the timber on the land at a specified sum per acre fixes the minimum price for which he may sell the timber on his electing not to buy, and where he makes a sale he must obtain the best price obtainable and account to the co-owners for their share of the proceeds.

[Ed. Note.—For other cases, see Tenancy in Common, Cent. Dig. § 25; Dec. Dig. § 33.\* 8 Va.-W. Va. Enc. Dig. 104.]

**2. Tenancy in Common (§ 31\*)—Services by Cotenant—Sales—Compensation.**—Where one of several owners of undivided interests in land authorized to sell the timber thereon for a specified price per acre made a sale, he was entitled to reasonable compensation therefor.

[Ed. Note.—For other cases, see Tenancy in Common, Cent. Dig. §§ 93, 94; Dec. Dig. 31.\* 8 Va.-W. Va. Enc. Dig. 122.]

**3. Specific Performance (§ 114\*)—Contracts Enforceable—Actions.**—A plaintiff, to entitle himself to specific performance of a contract, must allege and prove full compliance with the contract on his part, or, in a proper case such acts of part performance that a refusal of full performance will place him in a situation which does not lie in compensation and he must allege facts constituting per-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

formance or part performance so that the court may judge of their sufficiency.

[Ed. Note.—For other cases, see Specific Performance, Cent. Dig. §§ 356-370, 372; Dec. Dig. § 114.\* 12 Va.-W. Va. Enc. Dig. 532.]

Appeal from Circuit Court, Tazewell County.

Suit by Virginia A. Moss and another against W. F. Harman, who filed a cross-bill. From a decree for plaintiffs, defendant appeals. Amended and affirmed and remanded for further proceedings.

*Henry & Graham & Hawthorne* and *S. M. B. Coulling*, all of Tazewell, for appellant.

*Henson & Bowen*, of Tazewell, for appellees.

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HUETTEL COAL & COKE CO. *v.* LAWRENCE'S ADM'R.

Sept. 9, 1915.

[86 S. E. 151.]

**Master and Servant (§ 241\*)—Injury to Coal Miner—Contributory Negligence.**—A coal miner of experience, killed by the fall of slate from the roof of the place where he was working, was guilty of contributory negligence, barring recovery both at common law and under the mining act (Acts 1912, c. 178); the roof being in an obviously dangerous condition, so that not only could an ordinarily prudent man have seen the peril of remaining there, and he having ordered timbers, which he had not received, to make it safe, but he having also, within an hour of the accident, been repeatedly warned of the danger, and told that unless he came out he would be killed, and having disregarded the warnings.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 757; Dec. Dig. § 241.\* 9 Va.-W. Va. Enc. Dig. 703.]

Error to Circuit Court, Wise County.

Action by Milton A. Lawrence's administrator against the Huettel Coal and Coke Company. Judgment for plaintiff, and defendant brings error. Reversed and rendered.

*Bullitt & Chalkey*, of Big Stone Gap, for plaintiff in error.

*Wm. H. Werth*, of Tazewell and *Bond & Bruce*, of Wise, for defendant in error.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.